State of New York
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

MARGARET TAYLOR,

a Judge of the Civil Court of the City of New York, New York County.

Determination

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BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Julien, Schlesinger & Finz (By Alfred S. Julien; David Weprin, Of Counsel) for Respondent

The respondent, Margaret Taylor, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated March 3, 1981, alleging misconduct with respect to her actions toward attorneys in two cases in October 1979. Respondent filed an answer dated April 13, 1981.

By order dated April 23, 1981, the Commission designated

the Honorable Harold A. Felix referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 2, 3, 10 and 11, 1981, and the referee filed his report on August 28, 1981.

By motion dated September 25, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion and cross moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on November 24, 1981, thereafter considered the record of the proceeding and made the findings of fact herein.

With respect to Charge I, the Commission makes the following findings of fact:

1. Respondent has been a judge of the New York City Civil Court since January 1, 1977. In October 1979, respondent was assigned to Part XII, a Conference and Assignment Part of the Civil Court. A rule of the Civil Court required the appearance in that part by attorneys or their representatives who were authorized to settle, make binding concessions or otherwise dispose of matters before the court. Cases not settled would be assigned for immediate trial.

2. On October 17, 1979, the case of Schwartz v. Republic Insurance Company came before respondent, having been adjourned from a previous date. The plaintiff was represented by Lawrence Anderson and the defendant by Roberta Tarshis.

3. In conference with counsel on the Schwartz case, respondent was advised that the defendant company disputed the amounts

sought by the plaintiff and that an issue of fraud, possibly vitiating the underlying insurance policy, might be involved in the case.

4. In the conference with respondent, Ms. Tarshis stated that the defendant company demanded a jury trial. Respondent sought to dissuade Ms. Tarshis from the jury demand. Respondent told Ms. Tarshis that, notwithstanding the right to demand a jury trial, the goal of preserving the jury system would not be enhanced by jurors (i) who were reluctant to sit on long, detailed accounting cases such as the Schwartz case and (ii) who publicly voiced their displeasure at such assignments.

5. In seeking to persuade Ms. Tarshis to waive the jury, respondent warned Ms. Tarshis that unless there were such a waiver, Ms. Tarshis would be forced to sit in court until the jury was waived.

6. In the conference with opposing counsel, respondent was made aware that both sides were ready for trial in the Schwartz case. In response to an inquiry from respondent, plaintiff's counsel Mr. Anderson said a settlement was not possible because of the defendant company's position. Thereafter Ms. Tarshis undertook to call her client to ascertain whether it would waive a jury, notwithstanding its previously asserted position to the contrary. The matter was adjourned to 9:30AM the next day.

7. On October 18, 1979, both Ms. Tarshis and Mr. Anderson were present in court and ready for trial at 9:30AM. At 2:30PM, Ms. Tarshis approached the bench and asked that the Schwartz case be

called. Respondent, aware that the jury demand had not been waived, directed Ms. Tarshis to sit down.

8. On at least two occasions on the afternoon of October 18, 1979, respondent announced the availability of trial parts and asked if any attorneys were present who were ready for trial or to select a jury. On both occasions Ms. Tarshis and Mr. Anderson stood up, announced their readiness and were told by respondent to resume their seats. In a colloquy later that afternoon, respondent told Ms. Tarshis that the Schwartz case would not be called until her client waived a jury trial.

9. At approximately 3:30PM on October 18, 1979, after Ms. Tarshis and Mr. Anderson again indicated their readiness to pick a jury, respondent stated that she did not wish them to select a jury. Respondent thereupon excused Mr. Anderson from court and directed Ms. Tarshis to remain seated.

10. After respondent excused Mr. Anderson, Ms. Tarshis requested that a court reporter record the incident. Her request was not granted. Ms. Tarshis was excused by respondent approximately five minutes after Mr. Anderson had been excused.

11. At approximately 3:45PM on October 18, 1979, Mr. Anderson and Ms. Tarshis went to the office of Judge Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to discuss the foregoing events in the Schwartz case. At the conclusion of this meeting, Ms. Tarshis returned to respondent's court and was informed by respondent that the case had been adjourned to 9:30AM the next day.

12. On October 19, 1979, Ms. Tarshis reported early to respondent's court and proceeded to responder :'s chambers, where she expressed

her concern about the foregoing events in the Schwartz case. Ms. Tarshis told respondent she was upset about the matter. Respondent assured Ms. Tarshis that there was nothing personal in her actions toward Ms. Tarshis and that she was acting to preserve the jury system. Respondent apologized to Ms. Tarshis for any inconvenience or difficulty Ms. Tarshis may have encountered.

13. On October 19, 1979, at the opening of court, respondent apologized in open court to Ms. Tarshis and adjourned the proceedings in the Schwartz case to the November term of court before another judge. The Schwartz case was settled on February 4, 1980.

With respect to Charge II, the Commission makes the following findings of fact:

14. On October 11, 1979, at approximately 2:00PM, the case of Giordano v. Allstate Insurance Co. was called in respondent's part. The defendant was represented by James P. McCarthy, an attorney admitted to the bar in 1963. The plaintiff was represented by the firm of Weg, Myers, Jacobson & Sheer.

15. When the Giordano case was called, Mr. McCarthy approached the bench and advised respondent that he had a complaint with regard to the order in which the court clerks were calling the cases to be heard. Mr. McCarthy advised respondent that certain lawyers had their cases called shortly after they arrived in court, ahead of others who had been waiting in court for up to several hours. Mr. McCarthy and respondent discussed the court's calendar procedure in general.

16. While respondent and Mr. McCarthy were discussing court procedures, Glen Jacobson approached the bench. Mr. Jacobson was a law clerk for the plaintiff's counsel. He had graduated from

law school but had not yet been admitted to the bar. Mr. Jacobson handed respondent an affirmation which he designated as one of engagement made by plaintiff's counsel, in support of an application for an adjournment. Respondent threw the affirmation back at Mr. Jacobson and stated the case was ready for trial. Mr. McCarthy stated that it appeared respondent denied Mr. Jacobson's application because Mr. McCarthy criticized court procedures, whereupon respondent left the courtroom.

17. At approximately 2:15PM on October 11, 1979, Mr. McCarthy, Mr. Jacobson and two other attorneys who had been in court and observed the foregoing events, went to the office of the Honorable Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to inform him of respondent's action. Judge Wolin telephoned respondent and told her there were attorneys in his office who were complaining about her actions in the Giordano case. Respondent told Judge Wolin that she would return to her courtroom shortly.

18. At approximately 2:20PM, respondent returned to the courtroom and stated that the Giordano case would not be heard until all other cases had been heard.

19. At approximately 3:30PM on October 11, 1979, after all the other cases had been heard, respondent called the Giordano case and adjourned it to the following day.

20. Respondent acted in the manner described on the afternoon of October 11, 1979, because of her anger at the complaint made to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

21. On October 12, 1979, respondent directed her court clerks to call the Giordano case after all the other cases had been

heard. At 9:45AM, all the parties in the Giordano case were present in court. At approximately 12:30PM, the Giordano case was called. Respondent denied the plaintiff's request for an adjournment and subsequently granted the plaintiff's request to have the case marked off the calendar.

22. Respondent acted in the manner described on October 12, 1979, because of her anger at the complaint made the previous day to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(a)(1-5) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1-5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established, except that paragraph 12 of Charge II is not sustained and therefore is dismissed.

A judge is obliged, inter alia, to be patient, dignified and courteous to those who appear before her in her official capacity, to accord parties and their counsel full right to be heard according to law, and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.2 and 33.3 of the Rules). Respondent's conduct did not comport with these standards.

By refusing to call and by otherwise impeding the prompt disposition of the Giordano case, respondent was, in essence, retaliating against the attorneys in that case for their having complained about respondent's court procedures to the administrative

judge. Such a deliberate manipulation of the court calendar constitutes an abuse of judicial authority which impaired the rights of the parties, the dignity of the proceedings and the public's confidence in the integrity of the judiciary.

By forcing defendant's counsel in the Schwartz case to sit in court to compel a waiver of a jury trial, even though both sides were ready to select a jury and trial parts were available, respondent in essence (i) punished a lawyer whose client did not wish to pursue a settlement and (ii) tried to coerce the lawyer to waive a right she had repeatedly asserted.

The administrative directives and pressures on a judge to try to settle cases in busy courts such as respondent's do not excuse the abuses of discretion and decorum exhibited by respondent in the matters herein.

The Commission notes that respondent apologized to one of the lawyers she had mistreated. The Commission also notes that the apology followed complaints by lawyers to the administrative judge about respondent's conduct.

By reason of the foregoing, the Commission, by vote of 6 to 2, determines that respondent should be admonished. Mr. Kovner and Judge Shea dissent as to sanction and vote that the appropriate disposition is a letter of dismissal and caution. Mr. Kovner also dissents as to Charge II (the Giordano matter) and votes that the charge be dismissed. Mr. Kovner files herewith his dissenting opinion.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 13, 1982

Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct

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DISSENTING OPINION
BY MR. KOVNER

For the reasons set forth below, I concur with respect to Charge I, dissent with respect to Charge II, and conclude that a private letter of dismissal and caution would be the appropriate sanction.

Judge Taylor was, in October 1979, assigned to a conference and assignment part, which was responsible for a calendar previously handled by three such parts (formerly called "block-buster" parts). During eighteen court days of that month, 1032 cases appeared on Judge Taylor's calendar. During that month, 367 were settled, 229 were marked off calendar and 45 were set down for inquest, a record praised by Judge Francis X. Smith, the Administrative Judge of the Civil Court, and by Justice Leonard Sandler of the Appellate Division, First Department, both of whom testified before the referee.

Judge Taylor's mandate, in that difficult part, was to conference and settle cases, narrow the issues where possible, and to discourage adjournments and thus encourage discussions among the

waiting attorneys with the expectation that more settlements, or at least issue stipulations, could be achieved.* As Justice Sandler testified at the hearing before the referee: "Well, I think that when lawyers are together waiting in a courtroom setting, it is conducive to their talking to each other. I think it encourages communication of a kind that may not otherwise take place" [440].** The rules applicable to such parts were well publicized by the New York Law Journal:

> Attorneys or those representatives who are thoroughly familiar with the actions and fully authorized to settle, make binding concessions or otherwise to dispose of the matter are required to answer this calendar.
>
> Cases not settled will be forthwith assigned for immediate trial. Consent adjournments will not be recognized nor will service representatives be permitted to answer this calendar [Hearing Exhibit E].

The record is uncontroverted that, to achieve these results, Judge Taylor frequently took lunch while working through the lunch hour, made certain cases returnable in the afternoon to accommodate members of the bar, and rarely left the part before 5:00PM. The court staff assigned to assist such a judge had been called upon to work beyond the normal hours required of such personnel. This is the context in which the events of October 11 and October 12 must be viewed.

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*In noting the objectives of judges assigned to such parts, I do not suggest that the present system is ideal but merely recognize the inevitable burdens facing urban judges assigned to such parts.

**Bracketed numbers without a prefix refer to the hearing transcript. Bracketed numbers with the prefix "Ref." refer to the referee's report.

The findings of fact made by the referee with respect to Charge II are not disputed by respondent. When Giordano v. Allstate Insurance Co. was first called, no representative of plaintiff was present. Indeed, in sending to court a clerk not yet admitted to the bar, with an "Affirmation of Engagement", plaintiff's attorneys appeared to be in violation of the applicable rule, supra, and respondent would have been justified in marking the case off the calendar on October 11.* Since the majority did not base its finding of misconduct on the manner in which the affirmation was rejected, it need only be noted that the toss of the document back to Mr. Jacobson, landing on respondent's desk near Mr. Jacobson, cannot be viewed as misconduct.

The essence of the misconduct found by the majority is based not in lack of temperament but in abuse of authority, that is, in the inappropriate direction that Giordano be called last on the afternoon of October 11 and last again on the morning of October 12. A trial judge has, of course, very broad discretion in the control and ordering of his or her own calendar. Landis v. North American Co., 299 US 248, 254. Such discretion, however, does not extend to punitive or discriminatory actions in the calling of a calendar. Thus, no one would contend that a trial judge could direct that the cases of black attorneys be called last, or that the cases of an attorney, conceded to be a social friend of the judge, be called first.

*To offer the affirmation as one of "actual engagement" was misleading, since there is a question as to whether it was sufficient to justify the requested adjournment.

In finding misconduct, the majority appears to rely on the referee's finding that the direction to call Giordano last on the two occasions was

> for no reason other than respondent's resentment at Mr. McCarthy's bringing to her attention what he believed was wrongful action in respect to the calling of cases by her court officers and going to the Deputy Administrative Judge immediately thereafter [Ref. 39, emphasis added].

I do not find in the record adequate support for such a finding.

The respondent testified that the decision to call Giordano last was, in part, due to her concern that loud allegations of favoritism* on the part of the court officers should not be made in the presence of many other people [576] and that she hoped that a trial lawyer (as opposed to a clerk not yet admitted to practice) would appear prior to the calling of the case on October 11. The Commission's counsel urged that such testimony was at variance with the respondent's Answer to the Formal Written Complaint and with her testimony at an earlier investigative appearance, where she referred to her conern about the complaint to Judge Wolin and acknowledged an effort

> to protect the reputation of the two court officers who were diligently performing their tasks, on many occasions without taking lunch, and in a proper manner assisting the court to cope with a daily calendar of 100-150 cases [Answer Par. 23].

I find no inconsistency between respondent's testimony at the hearing before the referee, on the one hand, and her testimony at the investigative appearance and in her Answer, on

*McCarthy's allegation of favoritism in the calling of the calendar carried the implication that gratuities had been received by the court officers.

the other. The fact that she expressed annoyance at what she regarded as a serious but baseless allegation is not inconsistent with her testimony at the hearing that she preferred a less crowded courtroom at a time she anticipated the reassertion or further discussion of such serious charges. Unlike the referee who concluded that the action was motivated by "pure pique" [Ref. 83], I reject the urging of Commission's counsel to disregard respondent's testimony at the hearing. In doing so, I note that Commission's counsel has not challenged the evidence that respondent's "truthfulness, veracity, honesty and integrity" are unquestioned.

I believe that the effort to limit the number of persons who could hear the expected allegations (previously made in a loud voice) against the court officers was a legitimate concern for a trial judge assigned to the conference and assignment part. In perceiving a legitimate concern, I do not suggest that the method adopted (i.e. the calling of Giordano last on two occasions) was appropriate. Nor does respondent, who readily acknowledges her error. Obviously, not every abuse of discretion amounts to misconduct, as this Commission has often observed. And, in ordering her calendar, as opposed to ruling on substantive matters, respondent's discretion was especially broad.

Respondent could have marked Giordano off the calendar on October 11 at approximately 2:00PM, when it was first called. That it was not recalled until approximately 3:30PM should not be viewed as punitive, especially where respondent had not taken a

lunch hour. The case was in fact marked off the calendar between noon and 1:00PM the next day, due to plaintiff's attorney's announcement that he was not ready to proceed.* Although respondent's failure to call Giordano until the end of the morning calendar was inappropriate, her action did not rise to the level of misconduct.

With respect to sanction, it must be noted that the misconduct in Charge I led to a prompt private apology from respondent to Ms. Tarshis. Although the private apology followed the complaint to Judge Wolin, it was repeated in public in her courtroom, before many of the same people who had witnessed the inappropriate actions taken the previous day.

A public admonition, though less severe than a censure, is a serious sanction to any judge. There may be occasions where such discipline is appropriate, even for isolated misconduct. Unlike most conduct that has warranted such discipline, here there was no special interest served. Here, there is no issue of favoritism to relatives of judges (Matter of Spector, 47 NY2d 463 [1979]), no favors to other judges or public officials, as in the admonitions imposed in ticket-fixing cases (e.g., Matter of Dixon, 47 NY2d 532 [1979]), and no use of judicial office for a private interest (Matter of Lonschein, 50 NY2d 569 [1980]). The pending proceeding is based upon what was essentially over-zealous actions by a judge, perhaps unduly responsive to administrative goals. Furthermore, there was no pattern of inappropriate conduct as was found, for example, in

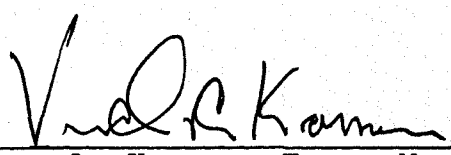
*Significantly, the morning of October 12 was the only occasion at which attorneys for both parties could discuss settlement. As Justice Sandler testified, the practice of keeping people in court and trying to get them to talk together was "consonant with achieving results in the calendar" [440].

Matter of Kaplan, NYLJ Sept. 7, 1979, p. 5, col. 4, Matter of Sena, NYLJ Feb. 2, 1980, p.1, col. 4, Matter of Mertens, 56 AD2d 456, 392 NYS2d 860, or Matter of Richter, 42 NY2d (a), 409 NYS2d 1013.

Relevant, too, is respondent's overall record. I believe the majority gave insufficient weight to the testimony of Judges Sandler and Smith, who praised her performance in the arduous part to which she was assigned.

In view of the respondent's impressive achievements on the bench, I believe that a private letter of dismissal and caution would have been the appropriate sanction.

Dated: January 13, 1982



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